

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ZEESHAN NAYAB, Individually and On	:
Behalf of All Others Similarly Situated,	: Civil Action No. 08 CV 00242 (CM)
	:
Plaintiff,	:
	:
-against-	: <b><u>DECLARATION OF NEIL A. STEINER</u></b>
	:
INTERACTIVE BROKERS GROUP, Inc.,	:
	:
Defendant.	:
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Neil A. Steiner declares under penalty of perjury:

1. I am a member of the law firm Dechert LLP, counsel to defendant Interactive Brokers Group, Inc. in the above-captioned action ("Interactive Brokers"), and am duly admitted to practice before this Court and the courts of the State of New York. I make this Declaration in support of Interactive Brokers' Motion for an Undertaking.

2. Annexed hereto as Exhibit 1 is a copy of the Risk Factors section of Interactive Brokers' Registration Statement as filed with the Securities and Exchange Commission on May 3, 2007.

Dated: New York, New York  
March 20, 2008

  
Neil A. Steiner

# **EXHIBIT 1**

S-1/A 1 a2175861zs-1a.htm FORM S-1/A

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As filed with the Securities and Exchange Commission on May 3, 2007.

Registration No. 333-138955

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## SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 5  
TO

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### FORM S-1 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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## INTERACTIVE BROKERS GROUP, INC.

(Exact name of registrant as specified in its charter)

**DELAWARE**  
(State or Other Jurisdiction  
of Incorporation or Organization)

**6211**  
(Primary Standard Industrial  
Classification Code Number)

**30-0390693**  
(I.R.S. Employer Identification No.)

**ONE PICKWICK PLAZA  
GREENWICH, CONNECTICUT 06830  
(203) 618-5800**

(Address, including zip code, and telephone number, including  
area code, of registrant's principal executive offices)

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**THOMAS PETERFFY  
CHAIRMAN, CHIEF EXECUTIVE OFFICER AND PRESIDENT  
ONE PICKWICK PLAZA  
GREENWICH, CONNECTICUT 06830  
(203) 618-5800**

(Name, address including zip code, and telephone number, including area code, of agent for service)

**ADAM M. FOX, ESQ.  
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NEW YORK, NEW YORK 10112  
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Copies to:

**GREGORY A. FERNICOLA, ESQ.  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
FOUR TIMES SQUARE  
NEW YORK, NEW YORK 10036  
(212) 735-3000**

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

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If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

## RISK FACTORS

*Investing in our common stock involves a substantial risk. You should consider carefully the following risks and other information in this prospectus, including our consolidated financial statements and related notes, before you decide to purchase our common stock. If any of the following risks actually materializes, our business, financial condition and operating results could be adversely affected. As a result, the trading price of our common stock could decline and you could lose part or all of your investment.*

### Risks Related to Our Company Structure

**Control by Thomas Peterffy of a majority of the combined voting power of our common stock may give rise to conflicts of interests and could discourage a change of control that other stockholders may favor, which could negatively affect our stock price, and adversely affect stockholders in other ways.**

Upon consummation of this offering, Thomas Peterffy, our founder, chairman and chief executive officer, and his affiliates will beneficially own approximately 85% of the economic interests and all of the voting interests in IBG Holdings LLC, which owns all of our Class B common stock, representing approximately 91.3% of the combined voting power of all classes of our voting stock. As a result, Mr. Peterffy will have the ability to elect all of the members of our board of directors and thereby to control our management and affairs, including determinations with respect to acquisitions, dispositions, material expansions or contractions of our business, entry into new lines of business, borrowings, issuances of common stock or other securities, and the declaration and payment of dividends on our common stock. In addition, Mr. Peterffy will be able to determine the outcome of all matters requiring stockholder approval and will be able to cause or prevent a change of control of our company or a change in the composition of our board of directors and could preclude any unsolicited acquisition of our company. The concentration of ownership could discourage potential takeover attempts that other stockholders may favor and could deprive stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company and this may adversely affect the market price of our common stock.

Moreover, because of Mr. Peterffy's substantial ownership, we are eligible and intend initially to be treated as a "controlled company" for purposes of the NASDAQ Marketplace Rules. As a result, we will not be required by NASDAQ to have a majority of independent directors or to maintain compensation and nominating and corporate governance committees composed entirely of independent directors to continue to list the shares of our common stock on The NASDAQ Global Select Market. We expect that our compensation committee will be comprised of Messrs. Thomas Peterffy (who will be the chairman of the compensation committee), Earl H. Nemser (our vice chairman) and Philip D. DeFeo (who is expected to join our board of directors as an independent director in connection with the closing of this offering). Mr. Peterffy's membership on the compensation committee may give rise to conflicts of interests in that Mr. Peterffy will be able to influence all matters relating to executive compensation, including his own compensation.

**The historical financial information of IBG LLC contained in this prospectus may not be representative of our results as an independent public company.**

Because IBG LLC has operated as a limited liability company that is treated as a partnership for U.S. federal income tax purposes, it historically has paid little or no taxes on profits in the United States. As a result, IBG LLC's provision for income taxes has not reflected U.S. corporate federal income taxes. Accordingly, IBG LLC's historical results of operations and financial position are not necessarily indicative of the consolidated results of our operations and financial position after completion of the recapitalization transactions as described in the section entitled "The Recapitalization Transactions and Our Organizational Structure." For additional information about past financial performance and the basis of

presentation of IBG LLC's historical financial statements, see "Selected Historical Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Unaudited Pro Forma Consolidated Financial Data" and the IBG LLC historical financial statements and related notes included elsewhere in this prospectus.

**The pro forma financial information in this prospectus may not permit you to predict our costs of operations, and the estimates and assumptions used in preparing our pro forma financial information may be materially different from our actual experience as a public company.**

In preparing the pro forma financial information in this prospectus, we have made adjustments to the historical financial information of IBG LLC based upon currently available information and upon assumptions that our management believes are reasonable in order to reflect, on a pro forma basis, the impact of the Recapitalization. Some of these adjustments include, among other items, a deduction and charge to earnings of estimated income taxes based on an estimated tax rate. These and other estimates and assumptions used in the calculation of the pro forma financial information in this prospectus may be materially different from our actual experience as a public company. The pro forma financial information in this prospectus does not purport to represent what our results of operations would actually have been had we operated as a public company during the periods presented, nor do the pro forma data give effect to any events other than those discussed in the unaudited pro forma financial information and related notes. See "Unaudited Pro Forma Consolidated Financial Data."

**Upon consummation of this offering, we will be dependent on IBG LLC to distribute cash to us in amounts sufficient to pay our tax liabilities and other expenses.**

We will be a holding company and, immediately after the consummation of the Recapitalization, our primary assets will be our approximately 8.7% equity interest in IBG LLC and our controlling interest and related rights as the sole managing member of IBG LLC and, as such, we will operate and control all of the business and affairs of IBG LLC and will be able to consolidate IBG LLC's financial results into our financial statements. We will have no independent means of generating revenues. IBG LLC will be treated as a partnership for U.S. federal income tax purposes and, as such, will not itself be subject to U.S. federal income tax. Instead, its taxable income will be allocated on a pro rata basis to IBG Holdings LLC and us. Accordingly, we will incur income taxes on our proportionate share of any net taxable income of IBG LLC, and also will incur expenses related to our operations. We intend to cause IBG LLC to distribute cash to its members in amounts at least equal to that necessary to cover their tax liabilities, if any, with respect to the earnings of IBG LLC. To the extent we need funds to pay such taxes, or for any other purpose, and IBG LLC is unable to provide such funds, it could have a material adverse effect on our business, financial condition or results of operations.

**We will be required to pay IBG Holdings LLC for the benefit relating to any additional tax depreciation or amortization deductions we may claim as a result of the tax basis step-up our subsidiaries receive in connection with this offering and related transactions.**

In connection with this offering, we will purchase interests in IBG LLC from IBG Holdings LLC for cash. In addition, IBG LLC membership interests held by IBG Holdings LLC may be sold in the future to us and financed by our issuances of shares of our common stock. The initial purchase will, and the subsequent purchases may, result in increases in the tax basis of the tangible and intangible assets of IBG LLC and its subsidiaries that otherwise would not have been available. Such increase will be approximately equal to the amount by which our stock price at the time of the purchase exceeds the income tax basis of the assets of IBG LLC underlying the IBG LLC interests acquired by us. These increases in tax basis will result in increased deductions in computing our taxable income and resulting tax savings for us generally over the 15 year period commencing with the initial purchase. We have agreed to pay 85% of these tax savings, if any, to IBG Holdings LLC as they are realized as additional

consideration for the IBG LLC interests that we acquire. See "Transactions with Related Persons, Promoters and Certain Control Persons—Tax Receivable Agreement."

At the time of the closing of this offering, the increase in the tax basis attributable to our interest in IBG LLC, assuming an initial offering price of \$29.00 per share of common stock (the midpoint of the range of initial public offering prices set forth on the cover of this prospectus) and our purchase of 8.6% of the outstanding interests of IBG LLC, is expected to be approximately \$740.1 million. The tax savings that we would actually realize as a result of this increase in tax basis likely would be significantly less than this amount multiplied by our effective tax rate due to a number of factors, including the allocation of a portion of the increase in tax basis to foreign or non-depreciable fixed assets, the impact of the increase in the tax basis on our ability to use foreign tax credits and the rules relating to the amortization of intangible assets, for example. Based on current facts and assumptions, including that subsequent purchases of IBG LLC interests will occur in fully taxable transactions, the potential tax basis increase resulting from the purchase of the IBG LLC interests held by IBG Holdings LLC following the closing of the offering could be as much as \$8.6 billion. The tax receivable agreement will require 85% of such tax savings, if any, to be paid to IBG Holdings LLC, with the balance to be retained by us. The actual increase in tax basis will depend, among other factors, upon the price of shares of our common stock at the time of the purchase and the extent to which such purchases are taxable and, as a result, could differ materially from this amount. Our ability to achieve benefits from any such increase, and the amount of the payments to be made under the tax receivable agreement, will depend upon a number of factors, as discussed above, including the timing and amount of our future income.

If either immediately before or immediately after any purchase or the related issuance of our stock, the IBG Holdings LLC members own or are deemed to own, in the aggregate, more than 20% of our outstanding stock, then all or part of any increase in the tax basis of goodwill may not be amortizable and, thus, our ability to realize the annual tax savings that otherwise would have resulted if such tax basis were amortizable may be significantly reduced. Although the IBG Holdings LLC members are prohibited under the exchange agreement from purchasing shares of Class A common stock, grants of our stock to employees and directors who are also members or related to members of IBG Holdings LLC and the application of certain tax attribution rules, such as among family members and partners in a partnership, could result in IBG Holdings LLC members being deemed for tax purposes to own shares of Class A common stock.

If the IRS successfully challenges the tax basis increase, under certain circumstances, we could be required to make payments to IBG Holdings LLC under the tax receivable agreement in excess of our cash tax savings.

**Our senior secured revolving credit facility and our senior notes impose certain restrictions. A failure to comply with these restrictions could lead to an event of default, resulting in an acceleration of indebtedness, which may affect our ability to finance future operations or capital needs, or to engage in other business activities.**

As of December 31, 2006, our total indebtedness (consisting of the aggregate amounts outstanding under senior notes, senior secured revolving credit facility and short-term borrowings) was approximately \$1.6 billion. On May 19, 2006, IBG LLC entered into a \$300.0 million three-year senior secured revolving credit facility with JPMorgan Chase Bank, N.A. as administrative agent, Harris N.A. as syndication agent, and Citibank, N.A. and HSBC Bank USA National Association as co-syndication agents. In addition, subject to restrictions in our senior secured revolving credit facility and our senior notes, we may incur additional first-priority secured borrowings under the senior secured revolving credit facility.

The operating and financial restrictions and covenants in our debt agreements, including the senior secured revolving credit facility and our senior notes, may adversely affect our ability to finance future operations or capital needs or to engage in other business activities. Our senior secured revolving credit facility requires us to maintain specified financial ratios and tests, including interest coverage and total leverage ratios and maximum capital expenditures, which may require that we take action to reduce debt or to act in a manner contrary to our business objectives. In addition, the senior secured revolving credit facility and the senior notes restrict our ability to, among other things:

- incur additional indebtedness;
- dispose of assets;
- guarantee debt obligations;
- repay indebtedness or amend debt instruments;
- pay dividends;
- create liens on assets;
- make investments;
- make acquisitions;
- engage in mergers or consolidations; or
- engage in certain transactions with subsidiaries and affiliates and otherwise restrict corporate activities.

A more detailed discussion of the restrictions contained in our senior secured revolving credit facility can be found on pages 149 and 150 of this prospectus. A failure to comply with the restrictions contained in the senior secured revolving credit facility could lead to an event of default, which could result in an acceleration of our indebtedness. Such an acceleration would constitute an event of default under our senior notes. A failure to comply with the restrictions in our senior notes could result in an event of default under our senior notes. Our future operating results may not be sufficient to enable compliance with the covenants in the senior secured revolving credit facility, our senior notes or other indebtedness or to remedy any such default. In addition, in the event of an acceleration, we may not have or be able to obtain sufficient funds to refinance our indebtedness or make any accelerated payments, including those under the senior notes. In addition, we may not be able to obtain new financing. Even if we were able to obtain new financing, we would not be able to guarantee that the new financing would be on commercially reasonable terms or terms that would be acceptable to us. If we default on our indebtedness, our business financial condition and results of operation could be materially and adversely affected.

### **Risks Related to Our Business**

**Our business may be harmed by global events beyond our control, including overall slowdowns in securities trading.**

Like other brokerage and financial services firms, our business and profitability are directly affected by elements that are beyond our control, such as economic and political conditions, broad trends in business and finance, changes in volume of securities and futures transactions, changes in the markets

in which such transactions occur and changes in how such transactions are processed. A weakness in equity markets, such as a slowdown causing reduction in trading volume in U.S. or foreign securities and derivatives, has historically resulted in reduced transaction revenues and would have a material adverse effect on our business, financial condition and results of operations.

**Because our revenues and profitability depend on trading volume, they are prone to significant fluctuations and are difficult to predict.**

Our revenues are dependent on the level of trading activity on securities and derivatives exchanges in the United States and abroad. In the past, our revenues and operating results have varied significantly from period to period due primarily to the willingness of competitors to trade more aggressively by decreasing their bid/offer spreads and thereby assuming more risk in order to acquire market share, to movements and trends in the underlying markets, and to fluctuations in trading levels. As a result, period to period comparisons of our revenues and operating results may not be meaningful, and future revenues and profitability may be subject to significant fluctuations or declines.

**Our reliance on our computer software could cause us great financial harm in the event of any disruption or corruption of our computer software. We may experience technology failures while developing our software.**

We rely on our computer software to receive and properly process internal and external data. Any disruption for any reason in the proper functioning or any corruption of our software or erroneous or corrupted data may cause us to make erroneous trades or suspend our services and could cause us great financial harm. In order to maintain our competitive advantage, our software is under continuous development. As we identify and enhance our software, there is risk that software failures may occur and result in service interruptions and have other unintended consequences.

**Our business could be harmed by a systemic market event.**

Some market participants could be overleveraged. In case of sudden, large price movements, such market participants may not be able to meet their obligations to brokers who, in turn, may not be able to meet their obligations to their counterparties. As a result, the financial system or a portion thereof could collapse, and the impact of such an event could be catastrophic to our business.

**We may incur material trading losses from our market making activities.**

A substantial portion of our revenues and operating profits is derived from our trading as principal in our role as a market maker and specialist. We may incur trading losses relating to these activities since each primarily involves the purchase or sale of securities for our own account. In any period, we may incur trading losses in a significant number of securities for a variety of reasons including:

- price changes in securities;
- lack of liquidity in securities in which we have positions; and
- the required performance of our market making and specialist obligations.

These risks may limit or restrict our ability to either resell securities we purchased or to repurchase securities we sold. In addition, we may experience difficulty borrowing securities to make delivery to purchasers to whom we sold short, or lenders from whom we have borrowed. From time to time, we have large position concentrations in securities of a single issuer or issuers engaged in a specific industry or traded in a particular market. Such a concentration could result in higher trading losses than would occur if our positions and activities were less concentrated.



In our role as a market maker, we attempt to derive a profit from the difference between the prices at which we buy and sell, or sell and buy, securities. However, competitive forces often require us to match the quotes other market makers display and to hold varying amounts of securities in inventory. By having to maintain inventory positions, we are subjected to a high degree of risk. We cannot assure you that we will be able to manage such risk successfully or that we will not experience significant losses from such activities, which could have a material adverse effect on our business, financial condition and operating results.

**Reduced spreads in securities pricing, levels of trading activity and trading through market makers and/or specialists could harm our business.**

Computer-generated buy/sell programs and other technological advances and regulatory changes in the marketplace may continue to tighten spreads on securities transactions. Tighter spreads and increased competition could make the execution of trades and market making activities less profitable. In addition, new and enhanced alternative trading systems such as ECNs have emerged as an alternative for individual and institutional investors, as well as broker-dealers, to avoid directing their trades through market makers, and could result in reduced revenues derived from our market making business.

**We may incur losses in our market making activities in the event of failures of our proprietary pricing model.**

The success of our market making business is substantially dependent on the accuracy of our proprietary pricing mathematical model, which continuously evaluates and monitors the risks inherent in our portfolio, assimilates market data and reevaluates our outstanding quotes each second. Our model is designed to automatically rebalance our positions throughout the trading day to manage risk exposures on our positions in options, futures and the underlying securities. In the event of a flaw in our pricing model and/or a failure in the related software, our pricing model may lead to unexpected and/or unprofitable trades, which may result in material trading losses.

**The valuation of the financial instruments we hold may result in large and occasionally anomalous swings in the value of our positions and in our earnings in any period.**

The market prices of our long and short positions are reflected on our books at closing prices which are typically the last trade price before the official close of the primary exchange on which each such security trades. Given that we manage a globally integrated portfolio, we may have large and substantially offsetting positions in securities that trade on different exchanges that close at different times of the trading day. As a result, there may be large and occasionally anomalous swings in the value of our positions daily and, accordingly, in our earnings in any period. This is especially true on the last business day of each calendar quarter.

**We are exposed to losses due to lack of perfect information.**

As market makers, we provide liquidity by buying from sellers and selling to buyers. Quite often, we trade with others who have different information than we do, and as a result, we may accumulate unfavorable positions preceding large price movements in companies. Should the frequency or magnitude of these events increase, our losses will likely increase correspondingly.

**Rules governing specialists and designated market makers may require us to make unprofitable trades or prevent us from making profitable trades.**

Specialists and designated market makers are granted certain rights and have certain obligations to "make a market" in a particular security. They agree to specific obligations to maintain a fair and orderly market. In acting as a specialist or designated market maker, we are subjected to a high degree of

risk by having to support an orderly market. In this role, we may at times be required to make trades that adversely affect our profitability. In addition, we may at times be unable to trade for our own account in circumstances in which it may be to our advantage to trade, and we may be obligated to act as a principal when buyers or sellers outnumber each other. In those instances, we may take a position counter to the market, buying or selling securities to support an orderly market. Additionally, the rules of the markets which govern our activities as a specialist or designated market maker are subject to change. If these rules are made more stringent, our trading revenues and profits as specialist or designated market maker could be adversely affected.

**Regulatory and legal uncertainties could harm our business.**

The securities and derivatives businesses are heavily regulated. Firms in financial service industries have been subject to an increasingly regulated environment over recent years, and penalties and fines sought by regulatory authorities have increased accordingly. This regulatory and enforcement environment has created uncertainty with respect to various types of transactions that historically had been entered into by financial service firms and that were generally believed to be permissible and appropriate. Our broker-dealer subsidiaries are subject to regulations in the United States and abroad covering all aspects of their business. Regulatory bodies include, in the United States, the SEC, the National Association of Securities Dealers (NASD), the Board of Governors of the Federal Reserve System, the Chicago Board Options Exchange (CBOE), the Commodity Futures Trading Commission (CFTC), National Futures Association (NFA) and the NYSE, in Switzerland, the Federal Banking Commission, in the United Kingdom, the Financial Services Authority (FSA), in Hong Kong, the Securities and Futures Commission (SFC), in Australia, the Australian Securities and Investment Commission (ASIC), and in Canada, the Investment Dealers Association of Canada (IDA) and various Canadian securities commissions. Our mode of operation and profitability may be directly affected by additional legislation; changes in rules promulgated by various domestic and foreign government agencies and self-regulatory organizations that oversee our business; and changes in the interpretation or enforcement of existing laws and rules. Noncompliance with applicable laws or regulations could result in sanctions being levied against us, including fines and censures, suspension or expulsion from a certain jurisdiction or market or the revocation or limitation of licenses. Noncompliance with applicable laws or regulations could adversely affect our reputation, prospects, revenues and earnings. In addition, changes in current laws or regulations or in governmental policies could adversely affect our operations, revenues and earnings.

Domestic and foreign stock exchanges, other self-regulatory organizations and state and foreign securities commissions can censure, fine, issue cease-and-desist orders, suspend or expel a broker-dealer or any of its officers or employees. Our ability to comply with all applicable laws and rules is largely dependent on our internal system to ensure compliance, as well as our ability to attract and retain qualified compliance personnel. We could be subject to disciplinary or other actions in the future due to claimed noncompliance, which could have a material adverse effect on our business, financial condition and results of operations. To continue to operate and to expand our services internationally, we may have to comply with the regulatory controls of each country in which we conduct, or intend to conduct business, the requirements of which may not be clearly defined. The varying compliance requirements of these different regulatory jurisdictions, which are often unclear, may limit our ability to continue existing international operations and further expand internationally.

**Our future efforts to sell shares or raise additional capital may be delayed or prohibited by regulations.**

As certain of our subsidiaries are members of the NASD, we are subject to certain regulations regarding changes in control of our ownership. NASD Rule 1017 generally provides that NASD approval must be obtained in connection with any transaction resulting in a change in control of a member firm. The NASD defines control as ownership of 25% or more of the firm's equity by a single entity or person and would include a change in control of a parent company. Interactive Brokers (U.K.) Limited is subject

to similar change in control regulations promulgated by the FSA in the United Kingdom. As a result of these regulations, our future efforts to sell shares or raise additional capital may be delayed or prohibited. We may be subject to similar restrictions in other jurisdictions in which we operate.

**We depend on our proprietary technology, and our future results may be impacted if we cannot maintain technological superiority in our industry.**

Our success in the past has largely been attributable to our sophisticated proprietary technology that has taken many years to develop. We have benefited from the fact that the type of proprietary technology equivalent to that which we employ has not been widely available to our competitors. If our technology becomes more widely available to our current or future competitors for any reason, our operating results may be adversely affected. Additionally, adoption or development of similar or more advanced technologies by our competitors may require that we devote substantial resources to the development of more advanced technology to remain competitive. The markets in which we compete are characterized by rapidly changing technology, evolving industry standards and changing trading systems, practices and techniques. Although we have been at the forefront of many of these developments in the past, we may not be able to keep up with these rapid changes in the future, develop new technology, realize a return on amounts invested in developing new technologies or remain competitive in the future.

**We are subject to potential losses as a result of our clearing and execution activities.**

As a clearing member firm providing financing services to certain of our brokerage customers, we are ultimately responsible for their financial performance in connection with various stock, options and futures transactions. Our clearing operations require a commitment of our capital and, despite safeguards implemented by our software, involve risks of losses due to the potential failure of our customers to perform their obligations under these transactions. If our customers default on their obligations, we remain financially liable for such obligations, and although these obligations are collateralized, we are subject to market risk in the liquidation of customer collateral to satisfy those obligations. There can be no assurance that our risk management procedures will be adequate. Any liability arising from clearing operations could have a material adverse effect on our business, financial condition and/or operating results.

As a clearing member firm of securities and commodities clearing houses in the United States and abroad, we are also exposed to clearing member credit risk. Securities and commodities clearing houses require member firms to deposit cash and/or government securities to a clearing fund. If a clearing member defaults in its obligations to the clearing house in an amount larger than its own margin and clearing fund deposits, the shortfall is absorbed pro rata from the deposits of the other clearing members. Many clearing houses of which we are members also have the authority to assess their members for additional funds if the clearing fund is depleted. A large clearing member default could result in a substantial cost to us if we are required to pay such assessments.

**The loss of our key employees would materially adversely affect our business.**

Our key executives have substantial experience and have made significant contributions to our business, and our continued success is dependent upon the retention of our key management executives, as well as the services provided by our staff of trading system, technology and programming specialists and a number of other key managerial, marketing, planning, financial, technical and operations personnel. The loss of such key personnel could have a material adverse effect on our business. Growth in our business is dependent, to a large degree, on our ability to retain and attract such employees.

**We are exposed to risks associated with our international operations.**

During 2005 and 2006, approximately 33% and 21%, respectively, of our net revenues were generated outside the United States. We are exposed to risks and uncertainties inherent in doing business in international markets, particularly in the heavily regulated brokerage industry. Such risks and uncertainties include political, economic and financial instability; unexpected changes in regulatory requirements, tariffs and other trade barriers; exchange rate fluctuations; applicable currency controls; and difficulties in staffing, including reliance on newly hired local experts, and managing foreign operations. These risks could cause a material adverse effect on our business, financial condition or results of operations.

**We do not have fully redundant systems. System failures could harm our business.**

If our systems fail to perform, we could experience unanticipated disruptions in operations, slower response times or decreased customer service and customer satisfaction. Our ability to facilitate transactions successfully and provide high quality customer service also depends on the efficient and uninterrupted operation of our computer and communications hardware and software systems. Our service has experienced periodic system interruptions, which we believe will continue to occur from time to time. Our systems and operations also are vulnerable to damage or interruption from human error, natural disasters, power loss, telecommunication failures, break-ins, sabotage, computer viruses, intentional acts of vandalism and similar events. While we currently maintain redundant servers to provide limited service during system disruptions, we do not have fully redundant systems, and our formal disaster recovery plan does not include restoration of all services. For example, we have backup facilities to our disaster recovery site that enable us, in the case of complete failure of our main North America data center, to recover and complete all pending transactions, provide customers with access to their accounts to deposit or withdraw money, transfer positions to other brokers and manage their risk by continuing trading through the use of marketable orders. These backup services are currently limited to U.S. markets. We do not currently have separate backup facilities dedicated to our non-U.S. operations. It is our intention to provide for and progressively deploy backup facilities for our global facilities over time. In addition, we do not carry business interruption insurance to compensate for losses that could occur to the extent not required. Any system failure that causes an interruption in our service or decreases the responsiveness of our service could impair our reputation, damage our brand name and materially adversely affect our business, financial condition and results of operations.

**Failure of third-party systems on which we rely could adversely affect our business.**

We rely on certain third-party computer systems or third-party service providers, including clearing systems, exchange systems, Internet service, communications facilities and other facilities. Any interruption in these third-party services, or deterioration in their performance, could be disruptive to our business. If our arrangement with any third party is terminated, we may not be able to find an alternative source of systems support on a timely basis or on commercially reasonable terms. This could have a material adverse effect on our business, financial condition and results of operations.

**We face competition in our market making activities.**

In our market making activities, we compete with other firms who act as market makers based on our ability to provide liquidity at competitive prices and to attract order flow. Market makers range from sole proprietors with very limited resources, of which there are still a few hundred left, to a few highly sophisticated groups which have substantially greater financial and other resources, including research and development personnel, than we do. These larger and better capitalized competitors may be better able to respond to changes in the market making industry, to compete for skilled professionals, to finance acquisitions, to fund internal growth and to compete for market share generally. We may not be able to compete effectively against these firms, particularly those with greater financial resources, and our failure to do so could materially and adversely affect our business, financial condition and results of

operations. As in the past, we may in the future face enhanced competition, resulting in narrowing bid/offer spreads in the marketplace that may adversely impact our financial performance. This is especially likely if others can acquire systems that enable them to predict markets or process trades more efficiently than we can.

**Our direct market access clearing and non-clearing brokerage operations face intense competition.**

With respect to our direct market access brokerage business, the market for electronic and interactive bidding, offering and trading services in connection with equities, options and futures is relatively new, rapidly evolving and intensely competitive. We expect competition to continue and intensify in the future. Our current and potential future competition principally comes from five categories of competitors:

- prime brokers who, in an effort to satisfy the demands of their customers for hands-on electronic trading facilities, universal access to markets, smart routing, better trading tools, lower commissions and financing rates, have embarked upon building such facilities and product enhancements;
- direct market access and online options and futures firms;
- direct market access and online equity brokers;
- software development firms and vendors who create global trading networks and analytical tools and make them available to brokers; and
- traditional brokers.

In addition, we compete with financial institutions, mutual fund sponsors and other organizations, many of which provide online, direct market access or other investing services. A number of brokers provide our technology and execution services to their customers, and these brokers will become our competitors if they develop their own technology. Some of our competitors in this area have greater name recognition, longer operating histories and significantly greater financial, technical, marketing and other resources than we have and offer a wider range of services and financial products than we do. Some of our competitors may also have an ability to charge lower commissions. We cannot assure you that we will be able to compete effectively or efficiently with current or future competitors. These increasing levels of competition in the online trading industry could significantly harm this aspect of our business.

**We are subject to risks relating to litigation and potential securities laws liability.**

We are exposed to substantial risks of liability under federal and state securities laws, other federal and state laws and court decisions, as well as rules and regulations promulgated by the SEC, the CFTC, the Federal Reserve, state securities regulators, the self-regulatory organizations (SROs) and foreign regulatory agencies. We are also subject to the risk of litigation and claims that may be without merit. We could incur significant legal expenses in defending ourselves against and resolving lawsuits or claims. An adverse resolution of any future lawsuits or claims against us could result in a negative perception of our company and cause the market price of our common stock to decline or otherwise have an adverse effect on our business, financial condition and/or operating results.

**Any future acquisitions may result in significant transaction expenses, integration and consolidation risks and risks associated with entering new markets, and we may be unable to profitably operate our consolidated company.**

Although our growth strategy has not focused historically on acquisitions, we may in the future engage in evaluations of potential acquisitions and new businesses. We may not have the financial resources necessary to consummate any acquisitions in the future or the ability to obtain the necessary



funds on satisfactory terms. Any future acquisitions may result in significant transaction expenses and risks associated with entering new markets in addition to integration and consolidation risks. Because acquisitions historically have not been a core part of our growth strategy, we have no material experience in successfully utilizing acquisitions. We may not have sufficient management, financial and other resources to integrate any such future acquisitions or to successfully operate new businesses and we may be unable to profitably operate our expanded company.

**Internet-related issues may reduce or slow the growth in the use of our services in the future.**

Critical issues concerning the commercial use of the Internet, such as ease of access, security, privacy, reliability, cost, and quality of service, remain unresolved and may adversely impact the growth of Internet use. If Internet usage continues to increase rapidly, the Internet infrastructure may not be able to support the demands placed on it by this growth, and its performance and reliability may decline. The recent growth in Internet traffic has caused frequent periods of decreased performance, outages and delays. Although our larger institutional customers use leased data lines to communicate with us, our ability to increase the speed with which we provide services to consumers and to increase the scope and quality of such services is limited by and dependent upon the speed and reliability of our customers' access to the Internet, which is beyond our control. If periods of decreased performance, outages or delays on the Internet occur frequently or other critical issues concerning the Internet are not resolved, overall Internet usage or usage of our web based products could increase more slowly or decline, which would cause our business, results of operations and financial condition to be materially and adversely affected.

**Our computer infrastructure may be vulnerable to security breaches. Any such problems could jeopardize confidential information transmitted over the Internet, cause interruptions in our operations or cause us to have liability to third persons.**

Our computer infrastructure is potentially vulnerable to physical or electronic computer break-ins, viruses and similar disruptive problems and security breaches. Any such problems or security breaches could cause us to have liability to one or more third parties including our customers, and disrupt our operations. A party able to circumvent our security measures could misappropriate proprietary information or customer information, jeopardize the confidential nature of information transmitted over the Internet or cause interruptions in our operations. Concerns over the security of Internet transactions and the privacy of users could also inhibit the growth of the Internet or the electronic brokerage industry in general, particularly as a means of conducting commercial transactions. To the extent that our activities involve the storage and transmission of proprietary information such as personal financial information, security breaches could expose us to a risk of financial loss, litigation and other liabilities. Our estimated annual losses from reimbursements to customers whose accounts have been negatively affected by unauthorized access have historically been less than \$500,000, but instances of unauthorized access of customer accounts have been increasing recently on an industry-wide basis. Our current insurance program may protect us against some, but not all, of such losses. Any of these events, particularly if they (individually or in the aggregate) result in a loss of confidence in our company or electronic brokerage firms in general, could have a material adverse effect on our business, results of operations and financial condition.

**We may not be able to protect our intellectual property rights or may be prevented from using intellectual property necessary for our business.**

We rely primarily on trade secret, contract, copyright, patent and trademark laws to protect our proprietary technology. It is possible that third parties may copy or otherwise obtain and use our proprietary technology without authorization or otherwise infringe on our rights. We may also face claims of infringement that could interfere with our ability to use technology that is material to our business operations.

In the future, we may have to rely on litigation to enforce our intellectual property rights, protect our trade secrets, determine the validity and scope of the proprietary rights of others or defend against

claims of infringement or invalidity. Any such litigation, whether successful or unsuccessful, could result in substantial costs and the diversion of resources and the attention of management, any of which could negatively affect our business.

**Our future success will depend on our response to the demand for new services, products and technologies.**

The demand for market making services, particularly services that rely on electronic communications gateways, is characterized by:

- rapid technological change;
- changing customer demands;
- the need to enhance existing services and products or introduce new services and products; and
- evolving industry standards.

New services, products and technologies may render our existing services, products and technologies less competitive. Our future success will depend, in part, on our ability to respond to the demand for new services, products and technologies on a timely and cost-effective basis and adapt to technological advancements and changing standards to address the increasingly sophisticated requirements and varied needs of our customers and prospective customers. We cannot assure you that we will be successful in developing, introducing or marketing new services, products and technologies. In addition, we may experience difficulties that could delay or prevent the successful development, introduction or marketing of these services and products, and our new service and product enhancements may not achieve market acceptance. Any failure on our part to anticipate or respond adequately to technological advancements, customer requirements or changing industry standards, or any significant delays in the development, introduction or availability of new services, products or enhancements could have a material adverse effect on our business, financial condition and operating results.

**The expansion of our market making activities into forex-based products entails significant risk, and unforeseen events in such business could have an adverse effect on our business, financial condition and results of operation.**

We are in the process of entering into market making for forex-based products. This includes the trading of cash in foreign currencies with banks and exchange-listed futures, options on futures, options on cash deposits and currency-based ETFs. All of the risks that pertain to our market making activities in equity-based products also apply to our forex-based market making. In addition, we have very little experience in the forex markets and even though we are easing into this activity very slowly, any kind of unexpected event can occur that can result in great financial loss.

**We are subject to counterparty risk whereby defaults by parties with whom we do business can have an adverse effect on our business, financial condition and/or operating results.**

In our electronic brokerage business, our customer margin credit exposure is to a great extent mitigated by our policy of automatically evaluating each account throughout the trading day and closing out positions automatically for accounts that are found to be under-margined. While this methodology is effective in most situations, it may not be effective in situations in which no liquid market exists for the relevant securities or commodities or in which, for any reason, automatic liquidation for certain accounts has been disabled. If no liquid market exists or automatic liquidation has been disabled, we are subject to risks inherent in extending credit, especially during periods of rapidly declining markets. Any loss or expense incurred due to defaults by our customers in failing to repay margin loans or to maintain adequate collateral for these loans would cause harm to our business.

### **Risks Related to the Auction Process for This Offering**

**Potential investors should not expect to sell our shares for a profit shortly after our common stock begins trading.**

We will determine the initial public offering price for the shares sold in this offering through an auction conducted by the placement agents. We believe that the auction process will reveal a clearing price for the shares of our common stock offered in this offering. The clearing price is the highest price at which all of the shares offered may be sold to potential investors. Although the placement agents and we may elect to set the initial public offering price below the auction clearing price, the public offering price may be at or near the clearing price. If there is little to no demand for our shares at or above the initial public offering price once trading begins, the price of our shares would decline following the initial public offering. If your objective is to make a short-term profit by selling the shares you purchase in the offering shortly after trading begins, you should not submit a bid in the auction.

**Some bids made at or above the initial public offering price may not receive an allocation of shares.**

The placement agents may require that bidders confirm their bids before the auction for the initial public offering closes. If a bidder is requested to confirm a bid and fails to do so within a required time frame, that bid may be rejected and may not receive an allocation of shares even if the bid is at or above the initial public offering price. Further, if the auction process leads to a pro rata reduction in allocated shares and a rounding down of share allocations pursuant to the rules of the auction, a bidder may not receive any shares in the offering despite having bid at or above the initial public offering price. In addition, we, in consultation with the placement agents, may determine, in our sole discretion, that some bids that are at or above the initial public offering price are manipulative of or disruptive to the bidding process, not creditworthy, or otherwise not in our best interest, in which case such bids may be rejected or reduced. For example, in previous transactions for other issuers in which the auction process was used, WR Hambrecht + Co has rejected or reduced bids when WR Hambrecht + Co, in its sole discretion, deemed the bids not creditworthy or had reason to question the bidder's intent or means to fund its bid. In the absence of other information, the placement agents or a participating dealer may assess a bidder's creditworthiness based solely on the bidder's history with the placement agents or a participating dealer. WR Hambrecht + Co has also rejected or reduced bids that it deemed, in its sole discretion, to be potentially manipulative or disruptive or because the bidder had a history of alleged securities law violations. Other conditions for valid bids, including eligibility and account funding requirements of participating dealers, may vary. As a result of these varying requirements, a bidder may have its bid rejected by the placement agents or a participating dealer while another bidder's identical bid is accepted.

**Potential investors may receive a full allocation of the shares they bid for if their bids are successful and should not bid for more shares than they are prepared to purchase.**

If the initial public offering price is at or near the clearing price for the shares offered in this offering, the number of shares represented by successful bids will equal or nearly equal the number of shares offered by this prospectus. Successful bidders may therefore be allocated all or nearly all of the shares that they bid for in the auction. Therefore, we caution investors against submitting a bid that does not accurately represent the number of shares of our common stock that they are willing and prepared to purchase.

### **Other Risks Related To The Offering**

**The disparity in the voting rights among the classes of shares may exert downward pressure on the price of our common stock.**

Shares of our common stock and Class B common stock entitle the respective holders to identical rights, except that each share of our common stock will entitle its holder to one vote on all matters to be voted on by stockholders generally while each share of Class B common stock will entitle



its holder to a greater number of votes. Initially, the holders of Class B common stock, in the aggregate, will be entitled to approximately 365.5 million votes. The difference in voting rights could exert downward pressure on the price of our common stock to the extent that investors view, or any potential future purchaser of our company views, the superior voting rights of the Class B common stock to have value.

**Future sales of our common stock in the public market could lower our stock price, and any additional capital raised by us through the sale of equity or convertible securities may dilute your ownership in us.**

The members of IBG Holdings LLC have the right to cause the redemption of their IBG Holdings LLC membership interests over time in connection with offerings of shares of our common stock as further described in the section entitled "The Recapitalization Transactions and Our Organizational Structure." We intend to sell additional shares of common stock in subsequent public offerings on a regular basis, including annual offerings of our common stock to finance future purchases of IBG LLC membership interests which, in turn, will finance corresponding redemptions of IBG Holdings LLC membership interests. These annual offerings and related transactions are anticipated to occur on or about each of the first eight years following this offering and, depending on the timing of redemptions, possibly extend into the future in accordance with an exchange agreement among us, IBG LLC, IBG Holdings LLC and the historical members of IBG LLC described in greater detail under "Transactions with Related Persons, Promoters and Certain Control Persons—Exchange Agreement." We may also issue additional shares of common stock or convertible debt securities to finance future acquisitions or business combinations. After the consummation of this offering, we will have approximately 34.7 million outstanding shares of common stock. This number includes all the shares of our common stock we are selling in this offering, which may be resold immediately in the public market. Assuming no anti-dilution adjustments based on combinations or divisions of our common stock, the annual offerings referred to above could result in the issuance by us of up to an additional approximately 365.5 million shares of common stock. It is possible, however, that such shares could be issued in one or a few large transactions.

We cannot predict the size of future issuances of our common stock or the effect, if any, that future issuances and sales of shares of our common stock may have on the market price of our common stock. Sales of substantial amounts of our common stock (including shares issued in connection with an acquisition), or the perception that such sales could occur, may cause the market price of our common stock to decline.

**All net proceeds of this offering will go to the current members of IBG LLC, including all of our executive officers and employee directors, rather than be used for corporate business purposes.**

We intend to use all net proceeds of this offering to purchase IBG LLC membership interests from IBG Holdings LLC, which will, in turn, use such proceeds to redeem a portion of the IBG Holdings LLC membership interests to be held by the current members of IBG LLC. Such redemptions will result in all net proceeds of this offering going to the current members of IBG LLC on a pro rata basis. Of this amount, more than 91.5% will go to our employee directors and executive officers. We do not anticipate using any net proceeds for corporate business purposes. See "Use of Proceeds."

**Our internal controls over financial reporting may not be effective and our independent auditors may not be able to certify as to their effectiveness, which could have a significant and adverse effect on our business and reputation.**

We are evaluating our internal controls over financial reporting in order to allow management to report on, and our independent auditors to attest to, our internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act of 2002, as amended, and rules and regulations of the SEC thereunder, which we refer to as Section 404. We are in the process of documenting and testing our internal control procedures in order to satisfy the requirements of Section 404, which requires annual

management assessments of the effectiveness of our internal controls over financial reporting and a report by our independent registered public accountants addressing these assessments.

During the course of our initial evaluation of internal controls over financial reporting, we identified a material weakness, as such term is defined by Section 404, relating to the interpretation and application of generally accepted accounting principles. Specifically, subsequent to the filing of our Registration Statement on Form S-1 on November 27, 2006, our management determined that there was an error in the classification of certain securities loaned fee income, securities borrowed fee expense and foreign currency translation. These items have since been reclassified, as reflected in the consolidated financial statements included in this prospectus. These changes did not have any impact on our net income, our consolidated statements of financial condition or our cash and cash equivalents. The foregoing material weakness has been remediated.

As we continue our evaluation, we may identify additional material weaknesses that we may not be able to remediate in time to meet the deadline imposed by the Sarbanes-Oxley Act of 2002, as amended, for compliance with the requirements of Section 404. We will be required to comply with the requirements of Section 404 for our year ending December 31, 2008. In addition, if we fail to achieve and maintain the adequacy of our internal controls, as such standards are modified, supplemented or amended from time to time, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404. We cannot be certain as to the timing of completion of our evaluation, testing and any remediation actions or the impact of the same on our operations. If we are not able to implement the requirements of Section 404 in a timely manner or with adequate compliance, our independent auditors may not be able to certify as to the effectiveness of our internal control over financial reporting and we may be subject to sanctions or investigation by regulatory authorities, such as the SEC. As a result, there could be a negative reaction in the financial markets due to a loss of confidence in the reliability of our financial statements. In addition, we may be required to incur costs in improving our internal control system and the hiring of additional personnel. Any such action could negatively affect our results of operations.

**You will experience immediate and substantial dilution.**

The price you pay for shares of our common stock sold in this offering is substantially higher than the per share value of our net assets, after giving effect to this offering. Assuming an initial public offering price for our common shares of \$29.00 per share (the midpoint of the initial public offering price range indicated on the cover of this prospectus), you will incur immediate dilution in net tangible book value per share of \$22.01. Dilution is the difference between the offering price per share and the net tangible book value per share of our common stock immediately after the offering. See "Dilution."

In addition, certain employees of IBG LLC currently hold Return on Investment Dollar Units (ROI Units) that entitle each holder thereof to accumulated earnings on the face value of the certificate representing his or her ROI Units. In connection with this offering, ROI Units may, at the employee's option, be cancelled and the accumulated earnings thereon invested in restricted shares of common stock in connection with this offering, which restricted shares would then vest over time assuming continued employment with IBG LLC and compliance with applicable covenants, thereby diluting the percentage ownership of IBG by unaffiliated public stockholders. Subsequent to this offering, non-cash compensation of employees will consist primarily of grants of restricted shares of our common stock. Such future grants of restricted shares would further dilute the percentage ownership of IBG LLC by unaffiliated public stockholders. See "Dilution," "Management—Return on Investment Dollar Units" and "Management—Employee Incentive Plan."

In addition, in the event IBG LLC uses cash on hand to acquire IBG LLC membership interests in the future, such use of cash is expected to have a dilutive effect on the existing holders of our common stock, as the price paid per membership interest is likely to be higher than IBG LLC's tangible book value

per membership interest. See "The Recapitalization Transactions and Our Organizational Structure—Exchange and Redemption of Membership Interests."

**Our common stock price may fluctuate after this offering. As a result, you may not be able to resell your shares at or above the price you paid for them.**

Prior to this offering, there has been no public market for our common stock. An active market may not develop following completion of this offering or, if developed, may not be maintained. The initial public offering price may not be indicative of the price at which our common stock will trade following completion of this offering. The market price of our common stock may be subject to sharp declines and volatility in market price. The market price of our common stock may also be influenced by many factors, some of which are beyond our control, including:

- the failure of securities analysts to cover our common stock after this offering or changes in financial estimates or recommendations by analysts;
- future announcements concerning us or our competitors, including the announcement of acquisitions;
- changes in government regulations or in the status of our regulatory approvals or licensure;
- public perceptions of risks associated with our services or operations; and
- general market conditions and other factors that may be unrelated to our operating performance or the operating performance of our competitors.

As a result, you may not be able to sell shares of our common stock at prices equal to or greater than the price you paid in this offering.

**There is no existing market for our common stock and we do not know if one will develop to provide you with adequate liquidity.**

There has not been a public market for our common stock. We cannot predict the extent to which investor interest in our company will lead to the development of an active trading market on The NASDAQ Global Select Market or otherwise or how liquid that market might become. If an active trading market does not develop, you may have difficulty selling any of our common stock that you buy.

**Certain provisions in our amended and restated certificate of incorporation may prevent efforts by our stockholders to change our direction or management.**

Provisions contained in our amended and restated certificate of incorporation could make it more difficult for a third party to acquire us, even if doing so might be beneficial to our stockholders. For example, our amended and restated certificate of incorporation authorizes our board of directors to determine the rights, preferences, privileges and restrictions of unissued series of preferred stock, without any vote or action by our stockholders. We could issue a series of preferred stock that could impede the completion of a merger, tender offer or other takeover attempt. These provisions may discourage potential acquisition proposals and may delay, deter or prevent a change of control of us, including through transactions, and, in particular, unsolicited transactions, that some or all of our stockholders might consider to be desirable. As a result, efforts by our stockholders to change our direction or management may be unsuccessful. See "Description of Capital Stock—Section 203 of the General Corporation Law of the State of Delaware."

**We may not pay dividends on our common stock at any time in the foreseeable future.**

As a holding company for our interest in IBG LLC, we will be dependent upon the ability of IBG LLC to generate earnings and cash flows and distribute them to us so that we may pay any dividends to our stockholders. To the extent (if any) that we have excess cash, any decision to declare and pay

dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, our results of operations, financial conditions, cash requirement, contractual restrictions and other factors that our board of directors may deem relevant. We have made no determination as to whether to pay dividends on our common stock at any time in the foreseeable future.

**We will incur increased costs as a result of having publicly traded common stock.**

We will incur significant legal, accounting, reporting and other expenses as a result of having publicly traded common stock that we do not currently incur. We also anticipate that we will incur costs associated with recently adopted corporate governance requirements, including requirements under the Sarbanes-Oxley Act of 2002, as amended, as well as rules implemented by the SEC and The NASDAQ Global Select Market. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. We also expect these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance (if we choose in the future to obtain such insurance) and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, we may experience more difficulty attracting and retaining qualified individuals to serve on our board of directors or as executive officers. We cannot predict or estimate the amount of additional costs we may incur as a result of these requirements or the timing of such costs. IBG LLC will pay all the expenses we may incur in connection with being a public company.